

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

\$16,532.04 U.S. CURRENCY, et al,

Defendant,

and

PHILLIP HURST,

Interested Party-Appellant.

UNPUBLISHED

February 11, 2000

No. 215649

St. Clair Circuit Court

LC No. 98-000340-CF

Before: O'Connell, P.J., and Meter and T. G. Hicks*, JJ.

PER CURIAM.

Interested Party-Appellant appeals as of right from the trial court's order entering a default judgment in this forfeiture action. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Various items were seized from appellant's home during a search. After being furnished a notice of forfeiture, appellant filed a bond. MCL 333.7523(1)(a) and (c); MSA 14.15(7523)(1)(a) and (c). The prosecutor later filed a complaint for forfeiture. When an answer was not timely filed, the prosecutor filed a default and moved for entry of a default judgment. Appellant moved to set aside the default, and for summary disposition. The circuit court denied appellant's motions, finding that his reliance on his criminal counsel to handle the forfeiture matter did not constitute good cause to set aside the default. The court granted the prosecutor's motion for entry of default judgment.

A motion to set aside a default or a default judgment is to be granted only if the movant shows good cause and files an affidavit of meritorious defense. MCR 2.603(D)(1). Traditionally, good cause

* Circuit judge, sitting on the Court of Appeals by assignment.

has been defined to mean: (1) a substantial irregularity or defect in the proceedings upon which the default is based; (2) a reasonable excuse for failure to comply with the requirements that created the default; or (3) a showing that manifest injustice would result if the default were allowed to stand. *Reed v Walsh*, 170 Mich App 61, 64; 427 NW2d 588 (1988). In *Alken-Ziegler, Inc v Waterbury Headers Corp*, 461 Mich 219; 600 NW2d 638 (1999), our Supreme Court clarified the showing a movant must make in order to be entitled to have a default or a default judgment set aside. Manifest injustice is the result that would occur if a default were allowed to stand even though a party has satisfied the meritorious-defense and good-cause requirements of MCR 2.603(D)(1). *Id.* at 233. If a party puts forth a meritorious defense and then attempts to satisfy the good-cause requirement by demonstrating the existence of a procedural irregularity or a reasonable excuse for failure to comply with the requirements that created the default, the strength of the defense affects the good-cause showing that is necessary. *Id.* If the party states a meritorious defense that would be absolute if proven, a lesser showing of good cause is required. *Id.* at 233-234. We review the circuit court's decision whether to set aside the default for a clear abuse of discretion. *Park v American Casualty Ins Co*, 219 Mich App 62, 66; 555 NW2d 720 (1996).

Appellant argues that he was entitled to have the default set aside. We disagree and affirm. The circuit court found that appellant failed to establish good cause to set aside the default because, after being served with the complaint in the forfeiture action, appellant did nothing. He did not communicate with the attorney representing him in the underlying criminal action; rather, he simply assumed that his attorney would attend to the forfeiture matter. Appellant is responsible for his own inaction. *Alken-Ziegler, supra* at 224. Therefore, the trial court correctly concluded that appellant did not demonstrate good cause to set aside the default.

Appellant argues that, because he put forth meritorious defenses to forfeiture, the failure to set aside the default results in manifest injustice. This argument is without merit. A party must establish both good cause and a meritorious defense before a default can be set aside. *Id.* at 233. The good-cause requirement of MCR 6.203(D)(1) cannot be satisfied by showing that manifest injustice would result if the default were allowed to stand because a meritorious defense exists. *Id.* at 233-234. Because appellant did not establish good cause, he was not entitled to have the default set aside, the existence of meritorious defenses notwithstanding. We find no abuse of discretion.

Affirmed.

/s/ Peter D. O'Connell

/s/ Patrick M. Meter

/s/ Timothy G. Hicks